

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA,)
4) Case No. 1:14-cr-124
5 Plaintiff,) Youngstown, Ohio
6 vs.) Thursday, April 2, 2015
7) 10:29 a.m.
8)
9 BRETT L. BENSON,)
10)
11 Defendant.)

8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE BENITA Y. PEARSON
10 UNITED STATES DISTRICT JUDGE

10 SENTENCING

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26 Proceedings recorded by mechanical stenography;
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1 P R O C E E D I N G S

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3 THE CLERK: The matter before the court is Case
4 Number 1:14-cr-124, the United States of America versus
10:29:29 5 Brett L. Benson.

6 THE COURT: Good morning, everyone. You may
7 retake your seats.

8 MS. SERRANO: Good morning, Your Honor.

9 THE COURT: Counsel for the United States, will
10:29:35 10 you please introduce yourself for the record?

11 MR. KALL: Yes. May it please the court. Matthew
12 Kall from the U.S. Attorney's Office for the government.
13 With me is FBI Special Agent Casey Carty.

14 THE COURT: Welcome to you both.

10:29:46 15 Counsel for Mr. Benson, will you please introduce
16 yourself along with your client for the record?

17 MS. SERRANO: Yes, Your Honor. Good morning. My
18 name is Mariela Serrano. I am the counsel for Mr. Benson,
19 sitting next to me in court today.

10:29:58 20 THE COURT: Welcome to you both.

21 MS. SERRANO: Thank you, Your Honor.

22 THE COURT: And we have with us a representative
23 from the United States Office of Pretrial Services and
24 Probation.

10:30:07 25 Sir, would you please introduce yourself?

1 PROBATION OFFICER: Good morning, Your Honor.
2 John Riffle with the U.S. Pretrial and Probation Office.

3 THE COURT: Welcome, Mr. Riffle. Thank you for
4 being here, and thank you for authoring the presentence
10:30:19 5 investigation report that we will focus on substantially
6 during today's sentencing hearing.

7 Mr. Benson, this hearing has been scheduled to
8 allow me to impose sentence upon you following your plea of
9 guilty to Count 1, the charge of bank robbery brought in the
10:30:34 10 indictment brought against you.

11 In preparation for today's sentencing hearing, I
12 have reviewed the final presentence report. I've also
13 reviewed again the plea agreement, the charging document.
14 And I appreciate Ms. Serrano's filing of a motion on behalf
10:30:50 15 of Mr. Benson. And I also have received a letter authored
16 by the parents of Mr. Benson. I've reviewed all of those
17 things.

18 Mr. Kall, can you think of anything that I haven't
19 mentioned that I should have reviewed in preparation?

10:31:03 20 MR. KALL: No, Your Honor.

21 THE COURT: Ms. Serrano, have you anything in
22 mind?

23 MS. SERRANO: No, Your Honor.

24 THE COURT: Let me focus all of our attention
10:31:10 25 first on the final presentence investigation report. And

1 when I say "final," I am speaking of a report that was last
2 revised on March 9th, 2015. As we know in this case, there
3 was a preplea/PSR, what we call an earlier-issued version,
4 limited version, but I'm not talking about that one. I'm
10:31:35 5 talking about the full report that was revised on the 9th of
6 March, 2015.

7 Mr. Kall, the addendum to that report, it's page
8 37, tells me that the United States filed no objections with
9 the probation office.

10:31:51 10 Is that true, sir?

11 MR. KALL: Yes, Your Honor.

12 THE COURT: Ms. Serrano, it tells me that you made
13 some suggestions for changes. Those were made. Are there
14 any other suggestions for changes you'd like me to entertain
10:32:01 15 today?

16 MS. SERRANO: Yes, Your Honor. If I can refer the
17 court to page 30 of the presentence investigation report,
18 item number 106, that notes pending charges dated February
19 14th, 2014, for rape, for threat of. That was pursuant to
10:32:24 20 an investigation, and no charges have been filed in that
21 case.

22 THE COURT: Thank you.

23 Mr. Riffle, have you been able to confirm what the
24 status is of paragraph 106, pending charge?

10:32:38 25 PROBATION OFFICER: Your Honor, right before the

1 hearing today, Mr. Kall pulled up, and I witnessed it,
2 pulled up the Lorain County Common Pleas Court docket and
3 Elyria City Municipal, and neither showed charges were
4 filed, which would have been the two districts, the two
10:32:56 5 courts that would have received the charges.

6 THE COURT: Okay. And based on your experience,
7 Mr. Riffle, this is an allegation made February 14, 2014.
8 We're a year beyond that. We're in March of 2015. In your
9 experience, if charges were to have been filed, do you
10:33:17 10 believe you would see it on the docket of either by now?

11 PROBATION OFFICER: Yes, Your Honor, I agree with
12 that statement.

13 THE COURT: Thank you, sir.

14 Any objection to any part of that response,
10:33:25 15 Mr. Kall?

16 MR. KALL: No, Your Honor.

17 THE COURT: Ms. Serrano, I will ask Mr. Riffle to
18 strike paragraph 106 from the report.

19 Mr. Riffle, because this is such a lengthy report,
10:33:39 20 what you might do is just remove that text so you don't have
21 to renumber every paragraph that follows, and just indicate
22 "Removed per order of the court," so that you can go from
23 106 to 107. If you don't mind the renumbering, and at the
24 end of this hearing, if the renumbering doesn't cause a
10:34:00 25 problem, feel free to renumber it. But it wouldn't upset me

1 if you just lifted out the subtopic heading "Pending
2 Charges" and all of that text, and in that place just put
3 "Text deleted by order of the court," and then just go on to
4 paragraph 107.

10:34:19 5 PROBATION OFFICER: Yes, Your Honor. Thank you.

6 THE COURT: Certainly.

7 Ms. Serrano --

8 MS. SERRANO: Yes, Your Honor.

9 THE COURT: -- any other adjustments that you'd
10:34:23 10 like to recommend?

11 MS. SERRANO: No, Your Honor, I don't see any
12 others in the report that need to be brought to the court's
13 attention. Thank you.

14 THE COURT: Thank you for that.

10:34:30 15 Let me tell counsel, I am not going to go through
16 every paragraph of this report with you. I have certain
17 parts in mind, because we've all reviewed it in advance, but
18 if there is another paragraph, like 106 or any other
19 paragraph, that you want me to talk about, just ask and I'll
10:34:47 20 take it up with you.

21 So the next place I'd like you to go is page 7.
22 Under the subtopic heading "Adjustment for Acceptance of
23 Responsibility" is paragraph 23. And that paragraph says,
24 "On the 21st of January, 2015, the following handwritten,
10:35:08 25 signed and unedited statement regarding the defendant's

1 actions in this case was received."

2 And then, Mr. Benson, there is a statement that
3 begins, "Honorable Judge Pearson," and it ends with your
4 signature, "Brett Lee Benson," and it is dated November 19,
10:35:27 5 2014.

6 Sir, have you had a chance to review what's
7 written there in paragraph 23?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is that indeed your statement to the
10:35:35 10 court?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Thank you.

13 Now, the next place I'd like to draw your
14 attention is the very next page, page 8. At the top is the
10:35:45 15 subtopic heading "Offense Level Computation." And on page
16 8, and it also continues onto page 9, is the offense level
17 computation for the offense for which Mr. Benson has
18 admitted guilt, but also the offenses for which he's
19 stipulated having committed by way of the factual basis in
10:36:15 20 the plea agreement.

21 And I questioned Mr. Riffle about the way in which
22 the computation was developed, because I hadn't seen it done
23 this way before. And I asked Mr. Riffle, "How is it that
24 you complete the computation by including the second bank
10:36:33 25 robbery?" Because we know Mr. Benson did rob two banks, and

1 that he also made a bomb threat to the Elyria School System.
2 And he directed me to Section 1B1.2, subpart (c) of the
3 Sentencing Guidelines.

4 And if you notice at paragraph 24, it says the
10:36:56 5 2014 guidelines are used. Paragraph 25 explains why we're
6 using the November 1, 2014 guidelines. I find, taken
7 together, both are accurate.

8 So when I look at paragraph (c) of 1B1.2, and it
9 says, "A plea agreement (written or made orally on the
10:37:14 10 record) containing a stipulation that specifically
11 establishes the commission of additional offenses shall be
12 treated as if the defendant had been convicted of additional
13 counts charging those offenses," and there is no objection
14 to this, so perhaps counsel was better informed than the
10:37:33 15 court on this score.

16 But having been advised by Mr. Riffle and having
17 read that section, I find that the computation is correct in
18 its completeness by including not only the bank robbery of
19 the Talmer Bank, which is Count 1, but the bank robbery
10:37:50 20 revealed in Count 2, and also the bomb threat.

21 Mrs. Serrano, do you have any objection to this?

22 MS. SERRANO: No, Your Honor. I did discuss this
23 with Mr. Riffle when I received the presentence
24 investigation report, and he noted to me the section that
10:38:07 25 you have just delineated on the record. The outcome,

1 however, is the same as we anticipated pursuant to the plea
2 agreement in regards to level 32, which is the level upon
3 which he begins for the offense that he is before the court,
4 minus the three levels which we anticipate the court may
10:38:33 5 give him today, leaving the total offense level down to
6 level 29 and Criminal History VI. So the outcome would be
7 the same pursuant to the fact that he has been determined
8 under the report to be a career offender.

9 THE COURT: Thank you.

10:38:50 10 MS. SERRANO: And that would be -- that is how I
11 discussed this with Mr. Riffle.

12 THE COURT: Thank you. I appreciate that. And
13 you're a little bit ahead of me, but I agree. But it's also
14 important to the court to make sure that although when the
10:39:04 15 Chapter 4 enhancement is applied, that that which comes
16 before it is accurate. And it sounds as if you, I and
17 Mr. Riffle are on the same page, so let's include Mr. Kall.

18 Sir, any response at all? There is no objection
19 from the government.

10:39:19 20 MR. KALL: We do not object. We believe it is
21 properly calculated.

22 THE COURT: Let me ask you, if you don't mind,
23 Mrs. Serrano has gone forward and left me to the place where
24 I believe I can next go to the Chapter 4 enhancement and
10:39:34 25 then acceptance.

1 Do you have any objection at all to the paragraphs
2 under the computation section that precede paragraph 51?

3 MR. KALL: We do not, Your Honor.

4 THE COURT: Mrs. Serrano, am I correct in
10:39:46 5 believing that you do not either?

6 MS. SERRANO: No, Your Honor. And just for the
7 record, had Mr. Benson not been a career offender, this
8 would have been an issue, which we would have addressed in
9 terms of objections. But since it wasn't, we did not.

10:39:59 10 THE COURT: Thank you.

11 May I keep you on your feet to start with you
12 regarding the Chapter 4 enhancement? You've alluded to it,
13 but I'd like us to make a clear record.

14 Paragraph 51 regards career offender status. And
10:40:15 15 I think it's correctly identified there, two offenses, that
16 being the burglary in 1996, which is captured at paragraph
17 77, and then also the burglary in 2005 -- pardon me,
18 attempted burglary in 2005, which is captured in 81, are
19 appropriate predicates for the career offender status, that
10:40:42 20 meaning two prior offenses of either violent crimes or
21 drug-related offenses, and the fact that at the commission
22 of the instant offense, the bank robbery of Talmer Bank,
23 that Mr. Benson was 18 or older.

24 Any objection to the application of the career
10:40:57 25 offender status?

1 MS. SERRANO: No, Your Honor. Pursuant to the
2 report and my review of Mr. Benson's criminal history, he
3 does fall within the enhancement provision under the
4 guidelines.

10:41:16 5 THE COURT: Thank you, Counselor.

6 For the United States, your position?

7 MR. KALL: We also believe he is properly
8 classified as a career offender, Your Honor, and we agree
9 with the presentence report.

10:41:26 10 THE COURT: Thank you.

11 Mr. Kall, if I may keep you on your feet to next
12 talk about acceptance of responsibility. I know that the
13 plea agreement anticipated, based upon Mr. Benson's posture
14 up until that time, that you would ask for the third level.
10:41:41 15 I would like to know if you are still of that mind. And if
16 you don't mind, I'd appreciate your impressions regarding
17 paragraph 52 as well.

18 MR. KALL: Certainly, Your Honor. This case was
19 charged in approximately the late spring of 2014. Shortly
10:41:55 20 thereafter, started having extensive discussions with
21 defense counsel about resolving this case. From the
22 beginning, the defendant, through his counsel, represented
23 to the court that he would accept and admit responsibility
24 for his actions.

10:42:12 25 Based on that, the government never had to

1 undertake any kind of preparation for trial, preparation for
2 a suppression hearing or anything of the sort. Any of the
3 delays in the case were due to extensive negotiations for
4 preparation of a preplea/presentence report and no fault of
5 the defendant.

6 So we do believe that the defendant is entitled to
7 a two-level reduction for acceptance, and we do move the
8 court for the additional third level for saving the
9 government time from preparing for trial.

10 THE COURT: Thank you, sir. Mr. Kall, I grant the
11 government's motion for the third level for acceptance of
12 responsibility. And I do find, Mr. Benson, that you are
13 also deserving of the first two levels. So I downwards
14 reduce the 32 by three levels, leaving you at paragraph 54's
15 total offense level of 29.

16 Any objection to that, Mrs. Serrano?

17 MS. SERRANO: No, Your Honor.

18 THE COURT: Mr. Kall?

19 MR. KALL: No, Your Honor.

20 THE COURT: I think we know that a career offender
21 requires that Mr. Benson's criminal history category be
22 Category VI, but why don't we go forward through the
23 criminal history section. And again, this is one of those
24 opportunities when I'm not going to stop at each paragraph,
25 but rather, I am going to go directly to the summation,

1 which is on paragraph 28. And there are some paragraphs
2 regarding criminal conduct after page 28, one of which we've
3 already addressed on the record. And if you'd like me to
4 take up any others, just speak to me about them.

10:43:53 5 But on page 28, starting under the subtopic
6 heading "Criminal History Computation," paragraph 94 tells
7 us that Mr. Benson's criminal history score is 17. And that
8 includes the appropriate discount given for 4A1.1(c),
9 meaning that only certain counts -- you are only given one
10:44:16 10 point up to four times; otherwise, you could have gotten
11 eight additional points. And I checked, Mr. Riffle,
12 needlessly, but nonetheless, it's my due diligence, and I
13 agree with paragraph 94.

14 And because Mr. Benson committed the instant
10:44:32 15 offenses while under court supervision as described in
16 paragraph 95, two additional levels were added -- pardon me,
17 two additional points, making his criminal history points
18 score 19, and that's reflected at paragraph 96.

19 Then paragraph 97 sums it up by again referring to
10:44:52 20 those two predicate offenses we addressed earlier, and
21 acknowledging that Mr. Benson's criminal history score is a
22 Criminal Category VI. And I remark that it was a VI before
23 career offender adjustment, but because of career offender
24 adjustment, it is also a Category VI.

10:45:16 25 Any objection to any part of that computation,

1 Mr. Kall?

2 MR. KALL: No, Your Honor.

3 THE COURT: Mrs. Serrano?

4 MS. SERRANO: No, Your Honor.

10:45:24 5 THE COURT: Counselors, can we agree then that for
6 the purposes of your allocution, you should consider the
7 advisory guidelines range as recommending to the court that
8 I look at the intersection of offense level 29, at Criminal
9 History Category VI, and that that recommends to the court a
10:45:43 10 low end of incarceration of 151 months, and a high end of
11 188 months?

12 Mr. Benson, that's a recommendation. It's not
13 mandatory. But I'm legally obligated to start there and to
14 disagree with it, move on by going below it or above it, of
10:46:04 15 course never exceeding the statutory maximum, which is 240
16 months, or 20 years.

17 You understand that, don't you, sir?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Mr. Kall, any objection to the
10:46:15 20 recommendation of 151 to 188 months?

21 MR. KALL: No, Your Honor.

22 THE COURT: Mrs. Serrano?

23 MS. SERRANO: No, Your Honor.

24 THE COURT: Counselors, anything else you'd have
10:46:23 25 me do before you allocute?

1 MR. KALL: Not on behalf of the government, Your
2 Honor.

3 MS. SERRANO: Not on behalf of the defense, Your
4 Honor.

10:46:33 5 THE COURT: So the order, Mr. Benson, will be that
6 I'll hear Mr. Kall's allocution on behalf of the United
7 States.

8 And I'll ask you, Mr. Kall, to assure me that
9 you've notified the victims, including the Elyria School
10:46:47 10 System, Dollar Bank and Talmer Bank, and that, to the extent
11 you care to do so, you speak for them, because I do not
12 believe anyone representing any victim is here. I'm
13 correct, aren't I?

14 MR. KALL: That is correct, Your Honor.

10:47:00 15 THE COURT: And then after your allocution, I will
16 hear you, Mrs. Serrano.

17 MS. SERRANO: Thank you, Your Honor.

18 THE COURT: And then Mr. Benson. It is certainly
19 your right. You legally have the right to speak to me if
10:47:10 20 you care to. I've read what you've written. But before I
21 impose sentence, I will certainly hear what else you'd like
22 to say.

23 THE DEFENDANT: Thank you very much, Your Honor.

24 THE COURT: Mr. Kall, when you're ready, I'm
10:47:20 25 ready.

1 MR. KALL: Thank you, Your Honor. This is a very
2 difficult case on a number of levels. Obviously, the nature
3 and circumstances of the offenses are serious. While the
4 defendant has pled guilty to one bank robbery, he admitted
10:47:35 5 in his factual basis to committing an additional bank
6 robbery. And also, at the time of committing one of the
7 bank robberies, calling in a bomb threat in order to try and
8 distract law enforcement officers in the course of it.

9 All of the victims have been notified pursuant to
10:47:54 10 the victim notification system that the government has in
11 place. All have been notified about the date and time of
12 court proceedings and have been given an opportunity to
13 submit notification statements or victim impact statements
14 if they wished to, but we have not received any from them.

10:48:11 15 The aggravating circumstances of the offenses are
16 obvious. The number of robberies involved, and the fact
17 that not only did defendant commit the bank robbery, but he
18 disrupted the activities of, you know, a large part of an
19 entire city at the time that he committed one of them.
10:48:31 20 Calling in the bomb threat caused a large portion of the
21 police department in Elyria to respond to the high school.
22 The high school was evacuated. They had to go next door to
23 a middle school. And, you know, it impacted, obviously, the
24 activities of the school for the entire day, and the
10:48:48 25 detective bureau for a substantial period of time.

1 I guess the only mitigating factors I would say as
2 it relates to it, compared to other bank robberies that I
3 have seen, in the defendant's favor, he didn't possess a
4 weapon and he didn't even brandish a toy weapon to try and
10:49:07 5 instill that fear in any of the tellers. So as it relates
6 to the nature and circumstances of the offenses, while it's
7 obviously serious, it is not the most serious bank robbery
8 that possibly could have been committed.

9 When you look at the nature and circumstances --
10:49:24 10 or excuse me, the personal history and characteristics of
11 the defendant, it is a very poor picture given his long
12 criminal history and his long involvement with the criminal
13 justice system going back to prior to the time that he
14 turned 18.

10:49:43 15 When you read through it, a few things jumped out
16 at me and I think are appropriate for the court to consider.
17 Number one, a pattern seems to emerge that defendant is
18 committing most of these offenses for property gain. He's
19 never worked as an adult, apparently. And as he has
10:50:03 20 admitted, he's had serious substance abuse issues. So it is
21 very clear that at least the majority of these offenses were
22 committed for personal gain to feed a drug habit. Many of
23 them are very serious. He is breaking into people's houses
24 to take things. And burglary creates a clear panic and
10:50:25 25 victimizes numerous innocent individuals. So they are very

1 serious offenses.

2 I also am drawn to the fact that on two different
3 prior occasions, the defendant has been found with a
4 firearm. While there was none involved in this present
10:50:40 5 offense, that is something that I think speaks to the risk
6 that the defendant poses to society and his respect for the
7 law.

8 The defendant's other previous offenses, he has
9 one conviction from, I believe it was 1995 or 1996 for
10:50:59 10 aggravated trafficking in drugs. Other than that, and a
11 drug possession crime since then -- excuse me, a drug abuse
12 crime in 2004, to his credit, it does not appear that he is
13 selling drugs to support himself over the last part of his
14 adult life. So that is a small factor in his favor.

10:51:24 15 As it relates to deterrence, no previous sentences
16 deterred the defendant, and he's had several substantial
17 sentences. So we believe that a lengthy sentence is
18 necessary to protect the public. For the better part of his
19 adult life, when he has been free from prison, he has
10:51:43 20 amassed a large number of criminal history points, and it
21 seems that it occurs in a very short period of time. As
22 soon as he gets out, and even though he is under supervision
23 from various courts, he seems to be unable to control
24 himself.

10:52:02 25 One of the aggravating factors in this case that

1 got him two extra criminal history points was the fact that
2 he was on post-release control at the time of the offense.
3 And I am not sure which way this piece of evidence cuts, but
4 I will disclose it for the court. One of the things that we
10:52:20 5 were able to find and use as evidence in this case is the
6 defendant was on location monitoring at the time he
7 committed this offense. He was wearing a GPS monitor when
8 he robbed the bank.

9 It shows how stupid the offense was, how motivated
10:52:37 10 he was by his drug use, and how unconcerned he was with the
11 consequences. I think it speaks to the defendant's state of
12 mind at the time. He couldn't control himself at the time
13 that he was doing this and, you know, really wasn't giving
14 too much thought to the consequences of his actions, which
10:52:57 15 clearly were going to land him, if not in state court, in
16 federal court, for doing what he did.

17 So those are the factors that we would ask the
18 court to consider in this case.

19 The defendant's other personal history and
10:53:13 20 characteristics paint an unusual picture. He comes from --
21 while he was adopted, he appears to come from a very loving
22 and supportive home. It's my understanding from talking to
23 Ms. Serrano that his parents are here today to support him.
24 And it appears that they have tried to do their best with
10:53:26 25 him raising him.

1 So, you know, the defendant clearly has a family
2 network behind him that, for whatever reason, didn't get him
3 off to the right track as an adult, falling in with the
4 wrong crowd, and his clear drug abuse problems are clearly
10:53:46 5 what has led him here today.

6 We would ask the court to consider all of those
7 factors, therefore, and impose a sentence within the
8 advisory guidelines range pursuant to the plea agreement.

9 THE COURT: Thank you, Mr. Kall.

10:53:57 10 Mrs. Serrano, I will hear you now.

11 MS. SERRANO: Thank you, Your Honor. The personal
12 history and characteristics of Mr. Benson speak for
13 themselves in terms of his criminal history. It is true
14 that he is not proud of his criminal history, and his
10:54:19 15 criminal history enhanced him to a career offender status,
16 but, Your Honor, not everything about Mr. Benson is
17 delineated in his criminal history. Yes, it is bad. No
18 question. But Mr. Benson, as a person, I found him to be
19 well mannered, well spoken, highly excitable due to the
10:54:50 20 nature of his maladies in that he suffers from depression,
21 high anxiety, other medical issues, but he has always been
22 courteous and very caring as far as his parents are
23 concerned.

24 I have spoken to his parents -- his mother,
10:55:07 25 rather, on several occasions. Mr. Benson speaks very highly

1 of them. His behavior, that doesn't denote that, because of
2 his history. But, in essence, he does care about them. He
3 does speak very highly of them.

4 He had a traumatized incident while he was in the
10:55:31 5 detention center at the age of 13, I think he was 13 -- 12,
6 13, 14 years old, where he was raped by four individuals
7 while being at the detention center under the protection of
8 the government, if you will. He was deeply traumatized by
9 this. Even his mother, in her letter to the court, which I
10:55:53 10 have a copy, noted that. His behavior would have probably
11 been corrected had he not been so traumatized by that
12 incident. His whole life I think deviated as a result of
13 that.

14 His drug issue had a major -- played a major role
10:56:17 15 in most of the offenses upon which he has been convicted.
16 The offense that he is before the court today for
17 sentencing, although it is not a drug-related offense, it
18 is -- was, rather, motivated by his drug usage.

19 As the prosecutor indicated, it was a stupid
10:56:35 20 offense. He was being monitored with an ankle bracelet. He
21 went into these two banks with the purpose of monetary gain,
22 but mostly because of his drug habit. He had a deep heroin
23 habit, which he used to self-medicate his personal medical
24 issues.

10:57:02 25 He suffers from high anxiety. He suffers from

1 depression. He has a gunshot in his lower back upon which
2 he has muscle deterioration, one of the reasons why he's
3 asking the court to recommend to the Bureau of Prisons that
4 he be sent to a medical facility.

10:57:22 5 Your Honor, he's not proud of his record. He has
6 noted that to me on various occasions. From the beginning,
7 from the first day I saw him, he has admitted responsibility
8 for his actions in this case. He noted to me that he had
9 confessed straight out. He has noted that to the
10:57:43 10 government, through me, on various occasions. There's never
11 been any issue in regards to his not accepting
12 responsibility for his actions here.

13 It is very difficult for an individual with his
14 criminal history to find employment. He has obtained a GED,
10:58:03 15 he has obtained vocational training, he has taken some
16 college courses while he's been incarcerated, all of that to
17 better himself. But then when he gets out, because of his
18 criminal history, and attempts to find employment, it's
19 basically a losing battle. And because of that, he has
10:58:26 20 become increasingly demoralized, falling prey to
21 embarrassment, frustration, and that further continued use
22 of drugs.

23 Mr. Benson should have had
24 psychological/psychiatric treatment after his rape in the
10:58:44 25 detention center. He never has received treatment for

1 anything in regards to that. I believe that had that been
2 the case, perhaps he would have turned his life around and
3 he would have been a better person in terms of his behavior
4 in society. But he never did get that treatment. His
10:59:06 5 parents acknowledged that to me. It was regretful. Perhaps
6 they felt they could handle it, and they were not able to.

7 At no point did he ever get anyone to sit down
8 with him and try to resolve the issues, the frustrations,
9 that inner anger that was within him. No one ever did that.
10:59:24 10 And so he was just spiralling downwards and downwards and
11 downwards, and now he is facing this court on a very serious
12 charge. He has never denied responsibility, Your Honor. He
13 has always admitted that.

14 He looks like a hardened criminal. All these
10:59:40 15 tattoos and his history makes you think that he is a
16 hardened criminal. That's only on paper. In person, I have
17 never found him to be such a person. I have never found him
18 to be discriminatory towards me. I have never found him to
19 be disrespectful towards me. I have never found him to be
11:00:01 20 disrespectful to the government, to anyone in regards to the
21 case that's pending before this court.

22 I know, Your Honor, that as a career offender, he
23 is facing much more serious penalties than if he had not had
24 the career offender status. And he is aware of that
11:00:24 25 himself. He does not excuse his conduct. He just wants the

1 court to understand his conduct, the reason what prompted
2 him to be the person that he is today.

3 I would ask the court to take that into
4 consideration and consider Mr. Benson for a sentence on the
11:00:56 5 low end of the guidelines. I believe, Your Honor, that
6 there is some redeeming quality in him. I know it's not
7 visible on paper, but there is some redeeming quality in
8 him. His parents would not be here -- would not be backing
9 him if it weren't there. It's just that he has never been
11:01:18 10 able to project that.

11 In state court, there is no psychiatric or
12 psychological treatment for offenders that I'm aware of when
13 they leave the system. In federal court, I think that may
14 be available to him upon his release from prison while he's
11:01:39 15 on supervision after he completes his sentence. That might
16 help him deal with his demons and his problems in regards to
17 what happened to him so many years ago.

18 I would like the court to take that into
19 consideration and to note the last page of my memorandum,
11:02:01 20 which is the conclusion and delineates the reasons that
21 we're asking the court to find that Mr. Benson has
22 characteristics, Your Honor, that might for the court to --
23 that might be there for the court to consider.

24 And we are also asking that he be assigned to an
11:02:34 25 FMC that is a medical facility. And he has three that I

1 have delineated for the court in order of preference.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mrs. Serrano.

4 Mr. Benson, now is your opportunity to say

11:02:49 5 whatever you'd like me to consider before I impose sentence,
6 sir.

7 THE DEFENDANT: Your Honor, I come to you to --

8 you know, I don't excuse any of my actions. I was wrong. I
9 made a serious mistake, a bad mistake. I wish I could

11:03:02 10 take --

11 THE COURT: Which one?

12 THE DEFENDANT: I wish I could take March 24th
13 back.

14 THE COURT: Thank you, Marshal.

11:03:07 15 THE DEFENDANT: I wish I could take that day back.
16 I would have never done this.

17 I want to apologize to everybody at Elyria High
18 School that was involved for that, and also the police
19 department. I'm ashamed for what I did. I apologize to my
11:03:23 20 family.

21 Your Honor, my whole life, what you see on paper,
22 it looks bad, tattoos look bad. Your Honor, I've been in
23 prison most of my life. Okay. I started this at a young
24 age. I spent over half my life in prison.

11:03:39 25 While I've been in prison, I had to struggle,

1 okay, with different situations. When I was released, I
2 never dealt with them situations. I come to the street. I
3 get back with the different people that I had left. When I
4 get back with them, my persuasion towards doing the wrong
11:04:02 5 thing always goes that way. My intentions are good when I
6 get out. I have a drug problem. I like drugs. I needed
7 help. I couldn't get it. I tried to get it. It just
8 didn't work.

9 I don't excuse none of my actions. I am wrong for
11:04:22 10 everything I've done. I want to apologize to you, Your
11 Honor, and please take into consideration my apologies.

12 THE COURT: Let me ask you. If you care to
13 respond, I'd like to hear it. Because what you've said, I
14 know. I know you robbed the bank. I mean, that's a matter
11:04:38 15 of record. I don't mind telling you that your confession
16 doesn't mean a whole lot, because bank robberies are usually
17 the most easily solvable crimes. You are filmed, and you
18 were wearing a GPS device. So confessing doesn't gain you
19 much.

11:04:53 20 THE DEFENDANT: Right.

21 THE COURT: So when you tell me you like drugs,
22 what I still don't know is when I can trust you back in
23 society. I like candy --

24 THE DEFENDANT: Right.

11:05:01 25 THE COURT: -- but I know I can't have candy for

1 breakfast, lunch and dinner.

2 THE DEFENDANT: Right.

3 THE COURT: What are you going to do about this
4 drug situation?

11:05:09 5 THE DEFENDANT: Your Honor, since I've been locked
6 up, I went through different methods to help myself and
7 better myself, through different ways. I've been -- I've
8 wrote a few different places to get help and get literature
9 about, you know, different psych medications, different --
11:05:23 10 I've talked with mental health. They've got me back on
11 medication. I see a counselor on a regular basis.

12 Your Honor, I don't want that life anymore. I
13 really don't. I am in my 40s. My whole life I've been
14 locked up. I've never had a chance to enjoy life. And when
11:05:41 15 I did get that chance, I messed it up. I don't want that
16 life anymore, Your Honor.

17 That day when I had the GPS on, when I woke up
18 that morning, I was so sick I couldn't even walk. I would
19 have never went in no bank. That's not me, you know. I
11:05:59 20 fought myself because I let myself go down that road of
21 drugs that put me in that situation, Your Honor.

22 I am very sorry. And, Your Honor, I can't excuse
23 anything that I've done. Like you said, you know that I
24 robbed the bank, so, I mean, there's no discrepancy there,
11:06:22 25 Your Honor.

1 I'm just, you know -- more or less, my parents, I
2 feel I hurt my parents very bad with this, because they're
3 elderly, okay, and they need me out there, and I chose to go
4 a different route, and now they are by themselves and they
11:06:36 5 don't have me out there to help them.

6 I threw my life away, and I want to get some of it
7 back when I can. I am going to do something with my life
8 when I get out. I've made preparations to do something with
9 my life. I've got a lot of different things that I can do,
11:06:54 10 but I just didn't have the chance to really do it. And I'm
11 going to put forth more effort when I get out to do those
12 things to better my life and to be a better person in
13 society.

14 THE COURT: I certainly hope so, because even if I
11:07:08 15 were to impose the statutory maximum, there's a good chance
16 you'd outlive that sentence, and at some point you will
17 regain society, and what you do at that time is going to be
18 up to you.

19 Your best documented history is your criminal
11:07:24 20 history. You've been in prison 21 of the 23 years after
21 your 18th birthday. That's amazing. I'm not even sure how
22 else to describe it.

23 So you're right when you say you threw your life
24 away. I know what Mrs. Serrano has spoken about, the
11:07:42 25 traumatizing rape that you endured, and I'm sorry about

1 that. But if you want to have any chance at life at all,
2 you have to push past that. I mean, it can't be that the
3 justification for your bad behavior is that traumatizing
4 event, or your drug addiction. At some point you have to
11:08:01 5 decide you are somebody.

6 At 41 years old, not to have any record of work,
7 of caring for family members -- in fact, while I know from
8 the letters that your parents wrote and their appearance
9 here, they love you, I also know you disappointed them, not
11:08:22 10 just with this last act, but again and again and again.

11 And I know it may seem somewhat insensitive, and
12 perhaps even a little ironic, but at least on this day, for
13 the next few years, and I am going to tell you how many in a
14 while, they're not going to have to worry about you.

11:08:38 15 Federal prison isn't state prison. It's not a camp. It
16 won't be easy. It's no place that you will enjoy.

17 But your parents won't worry. They won't worry
18 that you're going to turn up dead because you're
19 drug-addicted or overdosed. They are not going to have to
11:08:54 20 worry about some of the traumatization that I believe you
21 endured while in a juvenile facility. And they are going to
22 know that you are someplace doing what you've said on the
23 record, trying to make yourself better and fit to be a part
24 of society when that day comes.

11:09:08 25 I can't find much redeeming value in what I've

1 read about you or even what I've heard about you. I don't
2 mind admitting that to you. There's just little place to
3 start. All I can hope is that you really do want to be free
4 of your addiction, and to be a law-abiding member of
11:09:28 5 society. And that choice will be up to you. I hope it will
6 start while you're in prison.

7 And I can assure you of this, that after you've
8 served your term of prison, you will be on supervised
9 release to this court. I don't know what will happen to the
11:09:45 10 court control you were under under state court, if that will
11 also continue, but what won't happen is you'll leave federal
12 prison and return to violating the law, because the first
13 time you do that, your supervision will be revoked and
14 you'll be returned for as long as the law allows.

11:10:01 15 And you'll expect that, I'm sure, right?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Please listen. I've considered what
18 I've heard, and I've tried to match what I've heard and been
19 able to develop with my own thinking about your case,
11:10:13 20 Mr. Benson, to the 3553(a) factors.

21 And those are the factors that require that I look
22 at the nature and circumstances of the offense, the bank
23 robberies, the bomb threats made to the Elyria High School.
24 And also your history and characteristics, things that I
11:10:34 25 know about you, including your family history, much of which

1 I've spoken about. The assault upon you as a juvenile. The
2 medical condition; I understand it to be neuropathy. And in
3 addition to that, the mental conditions of paranoia, anxiety
4 and depression that affect you and many in society who
11:10:55 5 manage to avoid robbing banks and do many of the other
6 things you do, by the way.

7 And I believe that you have obtained a GED, but
8 you've not worked as an adult, at least not appreciably, not
9 in a way that is justified by any written record.

11:11:10 10 And then I look at the needs for punishment. I
11 look at the need -- other needs for sentencing you, to deter
12 you. I am not sure -- I am not at all sure that any
13 sentence I impose is going to deter you unless you change,
14 and I'm not sure that you're capable of changing. I know
11:11:31 15 you said you want to, so I'll leave that to you.

16 I need to protect the public. You are
17 ungovernable. You've been persistent in your law breaking.
18 You've made threats. Even though you didn't have a weapon,
19 you told the bank tellers that you did by the note you
11:11:48 20 wrote. The offenses you committed are serious.

21 And I don't mind the way you look. I've been
22 served coffee in coffeehouses by people as tattooed as you.
23 That's not your problem. Your problem is not the outside,
24 your problem is the inside. And once you realize that and
11:12:05 25 you start to fix it, you'll do just fine.

1 I will consider what Mrs. Serrano has asked, and I
2 do that under the auspices of trying to allow you to improve
3 your conduct and condition. And she's asked that when I
4 consider the 151- to 188-month range, that I stay within the
5 range and ideally give you a sentence at the low end, and I
6 will. I've calculated each. The low end is about 12 1/2
7 years without any credit for time served or good time, and
8 the 188 months is about 15 1/2 years. And I've thought,
9 will three years really make the difference? I don't know
10 that they will.

11 What I've also thought about is after imposing a
12 151-month term of incarceration, I'll give you three years
13 of supervision. So that sort of makes up the difference.
14 But it's three years out instead of three years in, three
15 years under the watchful eye of a federal probation officer
16 and a federal judge.

17 And I hope that by then you'll be less of a
18 threat. You'll be in your 50s, even if you earn credit for
19 good time and you're given credit for time served. And I
20 hope that by then you will have learned that your life is
21 worth living and that you don't want to live it on the
22 inside, you want to live it on the outside. And you know
23 what the rules are, the boundaries that we all appreciate
24 and abide by.

25 So for those reasons, please listen as I impose

1 the following sentence: I hereby commit you to the custody
2 of the United States Attorney General, Mr. Benson, to serve
3 a term of incarceration of 151 months.

4 Upon your release from prison, I order that you
11:13:57 5 serve a term of supervised release for three years.

6 Within 72 hours, Mr. Benson, after you leave
7 prison, you must report to the nearest probation -- federal
8 probation officer. And sometimes what happens is, because
9 the Bureau of Prisons will transition you out, rarely is a
11:14:17 10 prisoner just released on the last day of incarceration to
11 the street, but rather, a few months before, no more than a
12 year before, but about a year, six months before, you'll be
13 transitioned out into a halfway house so that you begin to
14 make your own rules, get up at a certain time, go out, get a
11:14:38 15 job, start making friends in the community, associate with
16 an NA group or an AA group, start making your way.

17 Sometimes the probation officers will come to the
18 halfway house to meet with you. And that will satisfy your
19 72-hour meeting with the probation officer. But if no
11:14:57 20 officer comes to meet with you to start that relationship,
21 you are legally obligated, within 72 hours of your last day
22 of imprisonment, even if it's at the halfway house, to make
23 your way to a federal probation officer to start the
24 conversation, "I'm back. I'm Brett Benson. I'm ready to be
11:15:17 25 law-abiding. I need your help." That's the conversation

1 starter.

2 Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The very first violation you may

11:15:26 5 commit is not meeting that 72-hour obligation. Do you
6 understand that?

7 THE DEFENDANT: Correct, Your Honor.

8 THE COURT: Know that federal probation officers
9 are not there to set you up, to get you in trouble. They'll

11:15:38 10 do what they believe you need to have done, but if you need
11 more help than your officer recognizes, ask for it. It's
12 confidential. It's provided by the government. You don't
13 have to worry about being embarrassed. Ask your officer.
14 Because the last thing you want is to stand before a federal
11:15:56 15 judge and say, "I needed more help than I was given." All
16 right?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Sir, because I believe that you won't
19 have the financial ability to do it, and there is a
11:16:08 20 restitution order, I am waiving the imposition of a fine,
21 but I am imposing the \$100 special assessment. So you owe
22 the federal courts \$100. It's due until it's paid in full.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

11:16:23 25 THE COURT: And I don't want your money, Mom and

1 Dad, I only want Mr. Benson's money. And I'm willing to
2 wait for it. So you can pay towards it while you're
3 incarcerated. If you haven't paid it in full then, and
4 you'll work in prison, so you may very well have, start
11:16:40 5 paying it while you're on supervision. So it's your
6 obligation to pay the court \$100.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Sir, you owe restitution to the

11:16:49 10 victims. You owe in total \$3,497. \$2,634 of that is owed
11 to Talmer Bank & Trust. It's to be paid to the Clerk of
12 Court. You're always to make a payment to the Federal Clerk
13 of Court. All you have to do, Mr. Benson, is give a check
14 or a money order, or if you walk in and you want to provide
11:17:15 15 cash, your name and your case number.

16 But for the record, I am going to state the
17 address to which the Clerk of Court will mail that payment.
18 But you never send it to that address, because if you pay
19 them directly, I won't know about it. So you pay the Clerk
11:17:32 20 of Court. I trust that the Clerk of Court will pay the bank
21 and the Elyria School District, and I'll speak about that in
22 a moment.

23 Does that make sense?

24 THE DEFENDANT: Your Honor, when I'm in prison,
11:17:44 25 say I'm working, won't they take some of my money out? Can

1 I pay it then while I'm in prison?

2 THE COURT: Absolutely.

3 THE DEFENDANT: All right.

4 THE COURT: And I'm going to speak about that too.

11:17:51 5 So the Prison Financial Inmate Responsibility Program will
6 take money from what you earn and pay it to Talmer Bank
7 until the amount is paid in full, and that amount is \$2,634.
8 The address is 111 Antioch Drive, Elyria, Ohio 44035. And
9 it's regarding the March 19, 2014 bank robbery.

11:18:21 10 \$762.60, Mr. Benson, is owed to the City of
11 Elyria's Auditor's Office, and its address is 131 Court
12 Street, 44035, and that's regarding restitution to Elyria
13 Police Department for their efforts in investigating the
14 bomb threat on March 24th, 2014, at the high school, and
11:18:49 15 also the bank robbery of Dollar Bank on that day.

16 And then the last piece is \$100.40, payable to
17 Elyria City School District. And that's to be paid to the
18 attention of the Treasurer's Office, 42101 Griswold Road,
19 Elyria, Ohio 44035.

11:19:12 20 All of these are to be paid through the United
21 States District Clerk of Court.

22 Now, as you have already indicated, while you're
23 in prison and working, you'll pay 25 percent of your gross
24 monthly income every month through the Federal Bureau of
11:19:32 25 Prisons' Inmate Financial Responsibility Program. And once

1 you leave prison, starting no later than 60 days, so you'll
2 have about two months to get your situation in order, and
3 then you'll start paying again once you're outside of
4 prison. And at that time you'll pay 10 percent of your
11:19:50 5 gross monthly income towards restitution. And you'll
6 continue making that payment until your restitution is paid
7 in full.

8 Do you understand, sir?

9 THE DEFENDANT: Yes, Your Honor.

11:20:00 10 THE COURT: Mr. Benson, I think you're employable,
11 and you will become employed, but when you first become
12 employed, it might be difficult for you to pay as much as 10
13 percent of your gross monthly income towards restitution.
14 Talk it over with your probation officer, because the last
11:20:19 15 thing you want to do is to miss a payment or to pay less
16 without first having gotten the permission of your probation
17 officer.

18 But if you talk it over with your probation
19 officer and it's decided that maybe you pay 5 percent of
11:20:33 20 your gross monthly income, or some fixed amount, \$20 a month
21 until you can pay more, I will accept that. But what I
22 won't accept is you paying less or not paying at all of your
23 own will without talking it over with probation and getting
24 your probation officer's agreement.

11:20:50 25 Do you understand?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Sir, please remember this,

3 especially while you are on this three-year term of

4 supervision, but hopefully for the rest of your life, that

11:21:02 5 you shall never commit another federal, state or local

6 crime. And that includes possessing any illegal or

7 controlled substances, any illegal or controlled substances,

8 whether it's a prescribed drug that's not prescribed for

9 you, or heroin, marijuana, cocaine, anything of that sort.

11:21:20 10 No possession at all.

11 Do you understand, sir?

12 THE DEFENDANT: Yes, on this, I do.

13 THE COURT: Sir, you are going to be drug tested.

14 You are going to have a minimum of three drug tests, but

11:21:30 15 you'll have more than that. The first is likely to come

16 within the first 15 days after you're released. During that

17 first 72-hour appointment we spoke about, you could be drug

18 tested then. So it doesn't even have to be as far out as 15

19 days. But know that you'll be drug tested often. And your

11:21:49 20 goal is to always make sure that your drug tests are

21 negative, showing no signs of illegal drugs or any other

22 contraband.

23 Do you understand, Mr. Benson?

24 THE DEFENDANT: Your Honor, say -- I'm kind of

11:22:00 25 confused on something that you said.

1 THE COURT: Sure, ask me.

2 THE DEFENDANT: Say -- you said something about

3 like a halfway house, and that you're talking about I'm

4 going to get urine tested and contact a PO. I don't

11:22:13 5 understand. If I go to a halfway house, I've got to

6 contact -- I don't -- I have to contact a PO and get a urine

7 test right then? I mean --

8 THE COURT: Seventy-two hours before you end that

9 halfway house stay. Because you'll still be under the

11:22:27 10 control of the Bureau of Prisons. They'll transition you

11 from living in the facility into a halfway house, and then

12 you'll know when your last day of living in the halfway

13 house is.

14 THE DEFENDANT: Right.

11:22:40 15 THE COURT: So three days before that, if you

16 haven't already met with a probation officer and been told

17 who it is that you'll report to during this three-year

18 period, then you must go to the nearest federal probation

19 office.

11:22:56 20 And, for instance, if you are back in Ohio, in the

21 Northern District, maybe back in Lorain, the nearest

22 courthouse would be the Cleveland Courthouse. You are

23 welcome back in the Youngstown Courthouse. We all have

24 probation offices. You can go to Akron. You can go to

11:23:14 25 Toledo.

1 But if for some reason, maybe you have been living
2 in a facility in a place outside of Ohio, like you recommend
3 that I ask the Bureau of Prisons to house you in Kentucky,
4 you ask that I recommend Massachusetts or North Carolina,
11:23:31 5 maybe you decide to stay in North Carolina. You go to the
6 nearest federal probation office to the place where you're
7 living within three days after you're released. Okay?

8 So if you are in transition, if you are in a
9 halfway house, I'd go within three days of them telling you
11:23:50 10 you're heading out, especially if you don't know where
11 you're going to live.

12 THE DEFENDANT: Right.

13 THE COURT: Because if you go three days before or
14 within three days of being released, you can talk to your
11:24:00 15 probation officer about where you can live.

16 THE DEFENDANT: If -- say, for instance, just so I
17 know, say like in a situation I don't have a car or a
18 license, okay, and I can't get to the PO's office, but I
19 contact -- I call, I contact, make verbal contact and let
11:24:16 20 them know what's going on --

21 THE COURT: Yes.

22 THE DEFENDANT: -- is that fine?

23 THE COURT: Ask the probation officer that
24 question.

11:24:22 25 THE DEFENDANT: Ah.

1 THE COURT: "Is this okay?"

2 What I suspect the officer is going to say is,
3 "I'll come to you," or "That facility, that halfway house
4 has bus tokens. I am going to ask that you be given a bus
11:24:38 5 token so you can come here."

6 But ask the question: "Does this qualify as that
7 meeting that I'm supposed to have within 72 hours of being
8 released?"

9 Good questions. Can you think of any others right
11:24:50 10 now?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Sir, you are going to have a lot of
13 time and you are going to think of others, because
14 especially when you are free and sober, free of drugs and
11:24:59 15 sober, your mind is going to work far better than it ever
16 has, and you are going to have all sorts of questions. So
17 you should contact the probation officer often and
18 frequently to make sure that you get all of your questions
19 answered.

11:25:10 20 Because you must have one meeting, that first
21 meeting within 72 hours of your release, doesn't mean that
22 you can only have one. It means that you must have one, but
23 you can have six or seven.

24 THE DEFENDANT: Right.

11:25:21 25 THE COURT: So ask the questions. You may not

1 remember as clearly in 12 1/2 years or so what you and I
2 spoke about today even.

3 THE DEFENDANT: I won't forget.

4 THE COURT: Okay. But if you do, just ask.

11:25:34 5 THE DEFENDANT: Right.

6 THE COURT: Understood?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Anything else before I go on?

9 THE DEFENDANT: No, Your Honor.

11:25:38 10 THE COURT: Okay. Sir, I don't think you'll
11 forget this either, but I want to make sure that you know.
12 You shall never ever possess a firearm, destructive device
13 or any dangerous weapon. That includes even a single
14 bullet. All right?

11:25:54 15 THE DEFENDANT: Yes.

16 THE COURT: Possession is possession. Possession
17 means holding, touching. Possession also means within your
18 reach. So it shouldn't be under the seat. Like you said,
19 you'll leave prison, you won't have a driver's license. Any
11:26:07 20 license you may have now will have expired by then. Don't
21 you agree?

22 THE DEFENDANT: Correct.

23 THE COURT: So you won't have a ride. At least
24 you won't be able to drive yourself. If someone offers you
11:26:16 25 a ride, even if you don't know for certainty, for sure, if

1 you believe that person has a gun in the car or some sort of
2 dangerous weapon or destructive device, don't get in the
3 car, because you don't want to have to explain to your
4 probation officer or to the court why the gun in the glove
11:26:33 5 box closest to you wasn't in your possession, or why the gun
6 under the seat wasn't in your possession.

7 Also, you are going to have to figure out where
8 you live. You are not going to have as many options as you
9 would like, but the one option you can't take up is to live
11:26:50 10 with somebody who has weapons or other contraband. Because
11 you don't want to have to explain that those drugs aren't
12 yours, that weapon isn't yours. Make sense?

13 THE DEFENDANT: Correct, Your Honor.

14 THE COURT: Okay. Sir, you're to share your
11:27:03 15 financial information with the probation office as
16 requested. It will be needed to decide if you're able to
17 continue paying and at what rate you continue paying
18 restitution, or for other purposes the probation officer
19 has. So when asked to provide financial information, you
11:27:19 20 shall provide it. Understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you shall not open any new credit
23 lines, no credit cards or anything like that without first
24 getting the permission of your probation officer.

11:27:30 25 THE DEFENDANT: Correct, Your Honor.

1 THE COURT: Do you understand that, sir?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Sir, in addition to these random drug
4 tests, you are also going to be put into an approved program
11:27:40 5 for drug treatment. It can be an outpatient or an inpatient
6 program. It can involve group therapy or individual
7 therapy. You and your probation officer will work together
8 to decide what's best to make sure that you remain free of
9 drugs and clean and sober.

11:27:56 10 Do you understand that, sir?

11 THE DEFENDANT: Can I start that while I'm in
12 prison? I mean, do they have drug programs I can start
13 while I'm there instead of waiting until I get out?

14 THE COURT: I certainly hope so. I hope that you
11:28:07 15 will be given drug treatment while in prison, and I am going
16 to recommend that. So this is after you're released.
17 Because my experience tells me that while you're in prison,
18 while I'm not naive enough to think that you won't have
19 access to drugs, I know that you will, so there will be a
11:28:21 20 prison drug treatment program that you have to qualify for
21 by your good behavior, by your willingness to really
22 participate. So you do that. That's up to you.

23 But when you leave prison, what I am ordering is
24 that you be given another opportunity for further drug
11:28:38 25 treatment. Because you are going to have a lot more

1 temptation outside of prison than inside of prison. So I
2 want to make sure that the sobriety you obtain in prison,
3 you can keep.

4 So you'll have both. So make sure that you
11:28:53 5 qualify for whatever is offered that will help you while
6 you're in prison.

7 THE DEFENDANT: Thank you.

8 THE COURT: Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

11:29:03 10 THE COURT: Now, this is important. I hope that
11 you don't do it in prison if you're drug tested, but when
12 you're out of prison, never do anything to interfere with
13 these random drug tests. Don't pretend you can't make
14 urine, "Oh, I don't have to go. I don't have to go." You
11:29:19 15 can go. Drink some water and go. Don't present somebody
16 else's urine. And don't fail to show up.

17 Because if you fail a drug test three times or if
18 you avoid taking a drug test, just don't show up, automatic
19 revocation. And I already told you what happens if I
11:29:35 20 revoke, you go back to prison.

21 While I don't want you to use drugs, if you're
22 using, I'd rather know about it. I'd rather you fail the
23 test and we decide how to treat that. Because I guarantee
24 you this, if you don't allow yourself to be helped, you fail
11:29:50 25 a test or you -- you fail a test and you pretend you're not

1 using. Like some people test positive for cocaine and they
2 say, "I'm not." You test positive for cocaine, you are
3 using cocaine. So admit it, or you avoid taking the test,
4 all reasons for revocation. All right?

11:30:08 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You are also going to undergo mental
7 health evaluation and treatment. Mrs. Serrano spoke about a
8 problem that she believes you have that stems from that
9 traumatic event at the Buckeye Institution. While you're in
11:30:20 10 prison, you should have access to mental health treatment.
11 If it's not made available to you, ask for it. But you'll
12 certainly have it during this three-year term after you're
13 released. Understood?

14 THE DEFENDANT: Yes, Your Honor. Thank you.

11:30:33 15 THE COURT: Sir, when your probation officer asks
16 you to do it, you must provide a DNA sample.

17 Do you understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Now, regarding restitution, I've
11:30:41 20 already spoken about the amounts you must pay, or at least
21 the percentages while in prison, and then initially after
22 prison, that can be changed with the agreement of your
23 probation officer.

24 But know this: If you become the beneficiary of
11:30:56 25 some windfall, if you receive an inheritance, if you win the

1 lottery, you get a bunch of money that you didn't expect, or
2 even money that you did expect, right off the top is your
3 restitution, and the rest is for you to live on. Make
4 sense?

11:31:13 5 THE DEFENDANT: Yes, Your Honor. Thank you.

6 THE COURT: Sir, nothing about the orders I've
7 placed will stop the government from seeking to collect what
8 you owe. So nothing I've said, even if you're paying, if
9 they want to put a lien on property that you're fortunate
11:31:30 10 enough to buy, they still can do that. All right?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Now, in addition to all else
13 that I've said you are going to endure during your three
14 years, I want you to know that because of your drug history,
11:31:43 15 I am going to allow the probation officer to search you, and
16 if contraband is found, to seize it, all without a warrant.

17 So if the probation officer develops a reasonable
18 suspicion that you are in possession of contraband -- what
19 is that, remember, guns, ammunition, dangerous weapon,
11:32:02 20 destructive device, firearms, any of that -- it can search
21 your body, search the place where you live, the place where
22 you're working, the car that you drive or are typically
23 driven in, a computer that you use if it's reasonable to
24 believe that you're using the computer in violation of law.
11:32:22 25 And if something in violation of your supervision is found,

1 it can be seized.

2 Now, please know this: Nothing will ever be done
3 to embarrass you. If you are working at that coffeehouse I
4 told you I could envision you working at, don't announce,
11:32:39 5 "It's my probation officer searching me." Nothing will be
6 done to out you in that way. Just be respectful. Cooperate
7 to the extent necessary. Allow the search to take place and
8 we'll take up the results once they're known. All right?

9 THE DEFENDANT: Yes.

11:32:51 10 THE COURT: Mrs. Serrano, I am going to recommend
11 that Mr. Benson be evaluated for housing at a medical
12 facility. I don't know in depth his medical condition, so I
13 will ask that he be evaluated, and if he is found to be
14 qualified for housing at a medical facility, that preference
11:33:13 15 be given to those places that you and Mr. Benson have asked
16 me to recommend. And they are Lexington, Kentucky, Devens
17 in Massachusetts, and Butner in North Carolina.

18 MS. SERRANO: Thank you, Your Honor.

19 THE COURT: Certainly.

11:33:32 20 Mr. Riffle, will you please tell me what I've
21 missed, or if I haven't missed it, what I've failed to
22 adequately describe?

23 PROBATION OFFICER: I don't believe you missed
24 anything, Your Honor. But I would at this point recommend
11:33:46 25 that the court also recommend in the judgment that the BOP

1 place him in the mental health and the substance abuse
2 treatment while he's serving his time.

3 THE COURT: Thank you. I will make that
4 recommendation now orally, adopting the recommendation made
11:34:04 5 by Probation Officer Riffle, and I'll also place it in
6 writing.

7 Mrs. Serrano, I know that you know this, and
8 you've already spoken to Mr. Benson about it is my
9 suspicion, and, Mr. Benson, I tell you this now on the
11:34:19 10 record, you entered a written plea agreement. And while
11 you've waived many of your appellate rights, you did not
12 waive them all. If you believe you have any viable theory,
13 any reason to appeal left, please talk it over with
14 Mrs. Serrano, because you only have 14 days after the date I
11:34:38 15 put in writing this sentence to file your notice of appeal.

16 If you file a notice of appeal, no matter how good
17 the theory of appeal, outside of that 14-day period, you may
18 very well have waived forever all of your appellate rights.

19 Do you understand?

11:34:55 20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Mrs. Serrano, I appreciate you taking
22 up the representation of Mr. Benson. Will you continue it
23 only as far as you and he would like, but especially to talk
24 with him about any viable theories of appeal; and, if he
11:35:10 25 believes he has one, or even if he believes he might come up

1 with something, to timely file that notice for him inside of
2 14 days?

3 MS. SERRANO: I will, Your Honor.

4 THE COURT: I am going to come back to you after
11:35:20 5 I've spoken to Mr. Kall about two things. One is I expect,
6 at least based upon the plea agreement, another motion, that
7 being to dismiss the remaining two counts.

8 MR. KALL: We do so move, Your Honor, to dismiss
9 Counts 2 and 3.

11:35:35 10 THE COURT: I grant that motion.

11 And I do ask you specifically to delineate any
12 objections you have to the sentence I've imposed; and
13 secondly, any objections to any part of the proceedings as
14 to Mr. Benson.

11:35:49 15 MR. KALL: There are no objections on behalf of
16 the government, Your Honor. Thank you.

17 THE COURT: Thank you, Mr. Kall.

18 Ms. Serrano, the same two questions for you. The
19 first is, any objections to the sentence as imposed? The
11:36:02 20 second is, any objections to any part of the proceedings as
21 to Mr. Benson?

22 MS. SERRANO: No, Your Honor, no as to both
23 questions.

24 I do have one point that I want a clarification.
11:36:16 25 I don't have anything in my notes regarding credit for time

1 served. Mr. Benson has been incarcerated since his arrest
2 in March of last year, and I would ask the court to give him
3 credit for the one year he's been incarcerated.

4 THE COURT: Well, I can't do it that way. I
11:36:32 5 mentioned it earlier when I spoke to Mr. Benson about 12 1/2
6 years less any good time, which I hope he earns, and I will
7 state clearly for the record that I will recommend to the
8 Bureau of Prisons that you be given credit for time served.
9 The bureau does that calculation. That's why I resist
11:36:52 10 Mrs. Serrano's request to make it one year. It will be what
11 the Bureau of Prisons decides it shall be.

12 Make sense?

13 THE DEFENDANT: Yeah.

14 THE COURT: And they're pretty good. They're
11:37:01 15 accurate. So they will look at credit -- they'll look at
16 time you've served in a federal facility. My belief is
17 because you committed a state crime, you might have been in
18 state custody for a day or so or more, I just don't know.
19 And the Bureau of Prisons may not give you credit for time
11:37:17 20 served in an Elyria Municipal Jail, for instance. But once
21 in federal custody, that's where they'll start the
22 calculation.

23 Make sense?

24 THE DEFENDANT: Yeah.

11:37:27 25 THE COURT: All right. So that motion is granted,

1 and I will make that in writing as well.

2 MS. SERRANO: Thank you, Your Honor.

3 THE COURT: Anything else?

4 MS. SERRANO: No, Your Honor.

11:37:34 5 THE COURT: All right. Mr. Benson, the part of
6 the sentence that cuts in one way that I don't really
7 appreciate is that if things go as well for you as you and I
8 would like, I may not even know about it, because I just
9 will never hear of you or about you or from you again, and
11:37:58 10 that's my wish, that you are going to go to prison, you are
11 going to rehabilitate yourself, you are going to take
12 advantage of every program, you are going to come out in
13 three years, and your probation officer is going to know
14 your voice because you are always going to be on the phone
11:38:13 15 or across from his or her desk asking, "How do I do this?
16 How do I do this? How do I do this?" And you won't ever be
17 in this court or any other place again. That's my wish for
18 you. I think that's the best outcome.

19 Nothing but the best, sir, do I wish for you.

11:38:30 20 THE DEFENDANT: Thank you, Your Honor.

21 THE COURT: This hearing is adjourned.

22 THE CLERK: All rise.

23 (Proceedings concluded at 11:38 a.m.)

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

<u>/s/ Mary L. Uphold</u>	<u>October 14, 2015</u>
Mary L. Uphold, RDR, CRR	Date